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SUBJECT: ITALY/BIOTECH: BAN ON FOUR GM CORN VARIETIES OVERTURNED BY ITALIAN COURT

Ref: Rome 4563

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¶1. (U) Summary. Italy's August 2000 ban on the commercialization of four biotech corn varieties was annulled on November 29, 2004, by a Lazio regional court. The ruling on the so-called Amato Decree result from a lawsuit filed in November 2000 by three multinational seed companies and an Italian biotech association. The ruling concurred w a 2003 European Court of Justice opinion that such a ban was justifia only if a Member State could demonstrate scientific evidence of risk humans. Four years under the Amato Decree has affected U.S. exports t Italy; in particular, it obstructed Italian imports of corn products, corn gluten feed and corn oil. It remains to be seen how successful U corn exporters will be in reestablishing their presence in the Italia market. In the meantime, last month's decree-law on coexistence, whi bans all GM cultivation in Italy through 2005 while Italy's regions d up their own coexistence plans, likely will continue to discourage pu acceptance of GM crops and products in Italy. End summary.

¶2. (U) On November 29, 2004, the Regional Administrative Tribunal (TAR) of Lazio (which includes Rome) annulled the Amato Decree, which since August 2000 had banned commercialization in Italy of four biotech corn varieties: BT 11 (Novartis), MON810 (Monsanto), MON 809 (Monsanto) and T25 (Aventis). All four varieties had already been authorized by the EU and marketed for both food and feed uses. In its decision, the court noted that "in the years of commercialization experience in the whole EU territory, as well as in the United States are no reports that these products have caused serious and irreversib threats" to human health. The ruling quotes a series of scientific recommendations, coming from different sources, speaking in favor of the safety of these products.

¶3. (SBU) The Amato decree had been enacted by the previous center-lef government primarily to defuse a political crisis (placating the Gree Party, which had threatened to withdraw from the government led by th Prime Minister Giuliano Amato if such a ban were not implemented), rather than in response to actual concerns about human health risks. November 2000, Assobiotec (the Italian organization of biotech companies) and three leading seed companies (Monsanto, Pioneer, and Syngenta) filed a lawsuit against the Amato decree in the Lazio TAR, claimed the decree violated several existing laws; the following year TAR suspended proceedings while seeking advice from the European Court of Justice (ECJ). The most recent TAR ruling concurred with the 2003 ECJ ruling that a national government could temporarily restrict suspend trade in genetically modified foods only if it had detailed, grounds to suspect a risk to human health.

¶4. (SBU) Following the coming to power in May 2001 of the current center-right government led by Prime Minister Silvio Berlusconi, the Agriculture Minister Giovanni Alemanno adopted a strong anti-biotech stance that included maintaining the Amato decree's ban. Since fall Alemanno had promised to lift the Amato decree in conjunction with implementation of regulations on the coexistence of GM and non-GM cultivation. Even with the advent of such regulations by a decree law passed in November 2004 (reftel), however, Alemanno did not take any steps to keep his earlier promise. We are unaware of any public comments by Alemanno or other ministry officials on the Lazio court decision.

¶5. (U) During the last four years, the Amato decree has had a signifi negative effect on shipments of all corn-based products from the Unit States to Italy. (Note: the United States cited the Amato Decree in i August 2003 filing with the WTO of a case against the EU for its moratorium on the approval of biotech products.) Corn gluten feed exports dropped from almost 200,000 tons per year in 1998/99 (valued some \$20 million) to virtually zero in 2003 and 2004. U.S. exports of corn oil to Italy, which totaled about 50,000 tons per year (valued a \$50 million) before the implementation of the Amato decree, also dropped to zero in 2003 and 2004. Even during the 2003/04 marketing year, when domestic Italian corn production was severely affected by drought and Italy actively sought feed imports on the world market, I refused to allow imports of U.S. corn. Sorghum imports were used for animal feed as a substitute for corn, the first time in a dozen years sorghum was imported (here the U.S. did benefit, with about 450,000 tons of U.S. sorghum exported to Italy).

¶6. (SBU) Comment. While either side may appeal the Lazio TAR's

decision, our contacts uniformly tell us that this is unlikely to happen. Clearly the demise of the Amato decree is a positive and welcome development. Nevertheless, the decree's nullification through a court decision rather than through positive GOI action reflects the continuing inability of the government to move towards science-based decisions involving the agricultural biotech sector. It remains to be seen whether

U.S. corn and corn products can reestablish their presence in the Italian market. In the meantime, last month's decree-law on coexistence, which bans all GM cultivation in Italy through 2005 while Italy's regions develop their own coexistence plans, likely will continue to discourage public acceptance of GM crops and products in Italy. Since the Italian Parliament must ratify the decree-law by late January (or act to extend the deadline) in order for it to remain in effect, Embassy has initiated a series of contacts with key Italian lawmakers to encourage them to accept permanent coexistence regulations that are science-based. End commen

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